

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

FILED

JAN 24 2013

Clerk, U.S. District Court
District Of Montana
Missoula

RODNEY ARNETTE EDMUNDSON,

Plaintiff,

vs.

GALLATIN COUNTY DETENTION
CENTER and OFFICER PETERSEN,

Defendants.

Cause No. CV 12-00033-BU-DLC

ORDER

Pending is Plaintiff Rodney Edmundson's Motion to Dismiss. (Doc. No. 12). Mr. Edmundson filed his Complaint on May 31, 2012. (Doc. No. 2). After a preliminary screening pursuant to 28 U.S.C. § 1915, Magistrate Judge Ostby found that Mr. Edmundson's Complaint failed to state a claim upon which relief and permitted him an opportunity to file an amended complaint. (Doc. No. 5). On October 2, 2012, Mr. Edmundson filed an Amended Complaint. (Doc. No. 7). Upon review of the Amended Complaint, Magistrate Judge Ostby determined that Mr. Edmundson had still failed to state a claim upon which relief could be granted. Magistrate Judge Ostby recommended the dismissal of this case and that a strike be issued pursuant to 28 U.S.C. § 1915(g).

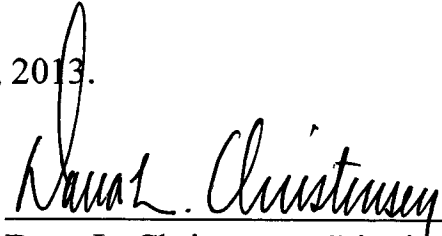
Mr. Edmundson filed a motion for extension of time to file objections and an extension was granted, albeit not the 80-day extension requested by Mr. Edmundson. (Doc. Nos. 10, 11). On January 15, 2012, Mr. Edmundson filed a Motion to Dismiss stating that the extension was not long enough because he was still in the Martz Diagnostic Intake Unit where he does not have access to legal resources. He states that while he believes his state and federal rights have been violated, without legal resources he will be unable to articulate his arguments successfully. (Doc. No. 12).

Mr. Edmundson's motion is construed as a Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure. Subject to any applicable federal statute, a plaintiff is entitled to voluntarily dismiss a case before the opposing party serves an answer or a motion for summary judgment. Fed.R.Civ.P. 41(a)(1)(i). Under Rule 41(a)(1)(i), "a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment." Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997). "T]he filing of a notice of voluntary dismissal with the court automatically terminates the action as to the defendants who are the subjects of the notice." Id. at 692. "A voluntary dismissal by a plaintiff under [Rule 41(a)(1)(i)] automatically terminates the action upon the filing of the dismissal with the clerk."

Hamilton v. Shearson-Lehman Am. Ex., Inc., 813 F.2d 1532, 1534-35 (9th Cir. 1987).

The Court thus accepts Mr. Edmundson's notice of dismissal and directs the Clerk of Court to close the case.

Dated this 24th day of January, 2013.

A handwritten signature in cursive script, reading "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, District Judge
United States District Court